IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:16-cv-00342-RJC

(3:07-cr-00144-RJC-2)

| NILES M. BELK, |) | |
|---------------------------|-------------|--------------|
| Petitioner, |) | |
| v. |) | <u>ORDER</u> |
| UNITED STATES OF AMERICA, |) | |
| Respondent. |))) | |

THIS MATTER is before the Court on consideration of the Respondent's motion to stay the disposition of Petitioner's § 2255 Motion to Vacate. (Doc. No. 3: Motion to Stay). Petitioner does not oppose the motion.

In his § 2255 Motion to Vacate, Petitioner challenges his designation as a career offender under § 4B1.2 of the <u>U.S. Sentencing Guidelines Manual</u>, and he relies on the Supreme Court's decision in <u>United States v. Johnson</u>, 135 S. Ct. 2551 (2015), in which the Court struck the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), after concluding that it violated due process because it was unconstitutionally vague.

In the motion to stay, Respondent notes the Supreme Court has granted a petition for a writ of certiorari in <u>Beckles v. United States</u>, No. 15-8544, to consider whether the <u>Johnson</u> Court's conclusion regarding the residual clause under the ACCA should apply to the residual clause of the career offender guideline, and if so, whether <u>Johnson</u> should apply retroactively on collateral review. The Court is also considering the issue of whether possession of a sawed-off shotgun is a crime of violence under the Guidelines. (Motion to Stay at 1-2).

Because resolution of the issues involved in the <u>Beckles</u> case may have a bearing on the disposition of the issues in Petitioner's case, the Court will grant Respondent's motion.

IT IS, THEREFORE, ORDERED that Respondent's motion to stay is **GRANTED**, (Doc. No. 3), and Respondent shall have 60-days from the date the Supreme Court renders its decision in <u>Beckles v. United States</u> to file a response to Petitioner's § 2255 Motion to Vacate.

SO ORDERED.

Signed: September 22, 2016

Robert J. Conrad, Jr.

United States District Judge